

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4858 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

R.M. VAISHNAV

Versus

STATE OF GUJARAT

Appearance:

MR MR ANAND for Petitioner
Ms MANISHA LAVKUMAR, AGP i/b M/S MG DOSHIT & CO
for Respondent No. 1, 2

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 19/08/1999

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution, the petitioner, an Executive Engineer, has challenged the order dated 16.6.1986 compulsorily retiring the petitioner under Rule 161(1)(aa)(i)(1) of the Bombay Civil Services Rules, 1959 with effect from 20.9.1986.

2. The learned counsel for the petitioner has

challenged the aforesaid order on the following grounds:-

- (i) The petitioner was not given three months' notice as the notice was served upon the petitioner on 28.8.1986. Reliance is placed on the decision in 1986 (3) SCC 506.
- (ii) The respondents relied on uncommunicated adverse remarks.
- (iii) The order was punitive in as much as the respondents relied on the pending departmental inquiries. Reliance is placed on the decision in 1999 GLR 1452.
- (iv) The order is arbitrary and malafide as the previous order of compulsory retirement passed by the respondents was quashed by this Court in Special Civil Application No. 1012 of 1980.
- (v) The impugned order is passed on the basis of the adverse remarks which are themselves inconsistent and vague and in any case they do not show the petitioner to be poor as is sought to be made on behalf of the respondents.

3. On the other hand, Ms Manisha Lavkumar, learned AGP submits that -

- (a) the impugned order of compulsory retirement was served on the petitioner on 18.6.1986
- (b) the adverse remarks quoted in the reply affidavit were communicated to the petitioner, but in any case even uncommunicated remarks could also be taken into consideration as per the well settled legal position. Reliance is placed on the decisions in AIR 1998 SC 1661 and 1997 (1) SCC 366.
- (c) the order was not punitive merely because the pending departmental inquiries were referred to therein. In any case, that argument is not available to the petitioner now that inquiries have also concluded. In two inquiries the petitioner was punished with pension cut of Rs.25/- and Rs.100/every month for one year and in one inquiry the petitioner was censured and of course in rest of the inquiries the petitioner has been exonerated.

(d) The order was not arbitrary or malafide. The previous decision of compulsory retirement was based on the adverse remarks for the period between 1975-80. However, thereafter there were adverse remarks and the petitioner's confidential reports were not such that the petitioner could be considered as a good officer.

(e) The adverse remarks could not be castigated as vague or inconsistent. If the petitioner's traits and his performance were a bundle of paradoxes, if not contradictions, the reporting officer could not be blamed for being meticulous in observing them and faithful in recording them in the petitioner's confidential reports. The officer was found to be inefficient and, therefore, he was rightly compulsorily retired.

4. Having considered the arguments of the learned counsel for the parties, this Court sees no merits in the contentions urged on behalf of the petitioner and finds considerable force in the submissions made by learned AGP Ms Manisha Lavkumar.

5. As regards the contention about short notice, it is pointed out on behalf of the respondents in the affidavit dated 29.9.1986 as well as in the affidavit-in-reply dated 13.8.1999 that the impugned order of premature retirement dated 16.6.1986 was sent to the petitioner at his office address at Dwarka by registered post. It was received at Dwarka office on 18.6.1986 and the acknowledgement was returned on 19.6.1986. As per the impugned order the petitioner was made to retire from service from 20.9.1986 and therefore the petitioner did have three months notice. A photostat copy of the acknowledgment is also produced along with the affidavit dated 13.8.1999. In view of the above, the petitioner's contention that he was on sick leave and, therefore, he did not receive the impugned order till 28.7.1986 cannot be accepted. In all probability after receiving the order the petitioner appears to have proceeded on leave on the ground of sickness. The first contention must, therefore, fail. Apart from that, the very fact that the petitioner has raised such a false contention speaks volumes for his regard for truth.

6. As far as the second contention about reliance on the uncommunicated remarks is concerned, in the affidavit-in-reply dated 29.9.1986 reference is made to some of the remarks for the year 1982-83 and also rejection of the petitioner's representation against said

remarks. In fact, the statement annexed to the said affidavit gives all the particulars about the date of communication of the adverse remarks, whether representation was made against such remarks along with the date and the decision on such representations. In view of the above, the contention is not factually borne out but no further discussion is called for in this behalf in view of the decision of the Apex Court in the case of STATE OF PUNJAB V. GURDAS SINGH in AIR 1998 SC 1661 wherein it is laid down that even uncommunicated adverse remarks can also be taken into consideration for deciding whether government officer deserves to be compulsorily retired or he should be continued in service after reaching a particular age.

7. As far as the third contention about reliance on pending departmental enquiry is concerned, the moment it is found that the petitioner was found guilty of committing serious misconducts in two inquiries, it takes the sting out of the petitioner's case. The learned A.G.P. has placed on record the order dated 23.11.1993 wherein it was held that the petitioner was guilty of the misconduct of certifying the work of check dam and making the payment to the contractor though the said work was not up to the mark and was of the inferior quality. Merely because the petitioner had retired before the order of penalty came into force and, therefore, the only penalty imposed was reduction in the monthly pension does not mitigate the seriousness of the misconduct. Similarly, by another order dated 4.8.1992 the petitioner was found guilty of the irregularities in the construction of Majoora Check Dam cum Pond at Badej Anuj and the penalty of reduction of Rs.100 per month for one year in the pension was imposed. The learned A.G.P. has also placed on record the order dated 9.10.1998 wherein the petitioner was held to be guilty of negligence but the Government did not impose any penalty because the petitioner had already retired and the Government did not even impose the penalty of reduction in pension but the fact remains that the petitioner was found guilty of negligence. On an overall view of the aforesaid outcome of the departmental inquiries it can be said that the petitioner was an officer who was required to be retired from Government service in public interest. As regards reliance placed by the learned counsel for the petitioner on the decision of this Court in 1999 GLR 1542 it is required to be noted that in the facts of that case although the government relied on pending departmental inquiries for the purpose of retiring the petitioner in that case, the inquiries were not pursued and, therefore, the Court found that it was unfair to the officer to rely

on pending inquiries and thereafter not to pursue them. The said reasoning is not obviously applicable in the facts of the present case as the inquiries have been pursued and the petitioner has been found guilty in two out of three inquiries and in the third inquiry a liberal view was taken. The third contention of the petitioner must, therefore, fail.

8. As regards the contention that the impugned order was arbitrary, mala fide and the same was passed after the previous order of compulsory retirement was quashed by this Court in Special Civil Application No.1012 of 1980, this contention cannot be accepted. It was after passing of the previous order of compulsory retirement in 1980 that it came to the notice of the Government that the petitioner had committed certain irregularities for which the charge sheets were issued to the petitioner in the year 1985-86. Hence, even if the adverse entries up to 1980 were to be ignored, quashing of the previous order of compulsory retirement and confidential reports passed up to 1980 cannot mean that the Government was deprived of the power of compulsorily retiring the petitioner in public interest on the basis of the facts which came to the notice of the Government after 1980.

9 As regards the last contention that the adverse remarks themselves are inconsistent and vague, it is true that this Court had made certain observations while allowing Special Civil Application No.1012 of 1980 directed against the previous order of compulsory retirement. However, in view of the aforesaid findings that the petitioner was guilty of certain serious irregularities which came to the notice of the Government after 1980 and in view of the fact that even the petitioner's performance after 1980 was not such as to consider the petitioner as a good officer who deserved to be continued in service in the public interest beyond the age of 55, no fault can be found with the impugned order of compulsory retirement. As per the settled legal position, it is the officer's performance over a period of time which is required to be considered and not his performance in an isolated year.

10. In view of the above discussion, there is no merit in the petition. The petition is, therefore, dismissed. Rule is discharged with costs.

sundar/mond.